THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 14072 of 2005

Oral order:

The petitioner claims that he was appointed as Casual Mazdoor on 15.10.1988 in the Telecom Department, and that he had put in nearly 16 years of service with intermittent artificial breaks. Pursuant to the conversion of Telecom Department into BSNL, the petitioner states that BSNL converted 18 part time casual labourers into full time casual labourers. As the cases of some of the senior casual labourers was ignored, the petitioner states that Telecom Employees Welfare Association, Telecom District, made representation to the General Manager, Telecom District, who in turn issued notice dated 13.11.2003 inviting objections/suggestions from part-time/full-time casual labour/temporary status mazdoors. The petitioner states in pursuance thereof 49 representations were made, and even though the Sub-Divisional Engineer (Vigilance) addressed a letter dated 12.12.2003 to the Assistant General Manager (Administration) wherein the name of the petitioner finds place at Sl. No. 28 with a request to take action for regularization of the services of casual mazdoors mentioned therein, no action thereon had been taken. Hence the petitioner filed the present writ petition seeking a direction to the respondents to regularize his services in terms of the recommendations made by the Sub-Divisional Engineer (Vigilance) in his letter dated 12.12.2003 addressed to the Assistant General Manager (Administration).

The learned counsel for the petitioner submits that the petitioner has completed more than 240 days, and as recommended by the Sub-Divisional Engineer (Vigilance) in his letter dated 12.12.2003, wherein

his name finds place at Sl. No. 28, he is entitled to regularization of his service, and the action of the respondents in not taking any action thereon and not regularizing his services, is illegal and arbitrary.

The respondents filed counter denying the averments made by the petitioner in the affidavit filed in support of the writ petition. As the respondents have taken a stand that the letter dated 12.12.2003 does not confer any right for regularization in view of the ban imposed vide orders dated 12.02.1999 and 30.03.1985, and there being no averment in the counter with regard to manipulation or fabrication of the records, and having regard to the fact that the learned Standing Counsel for the respondents had expressed genuineness of the letter dated 12.12.2003, this Court directed appearance of all the respondents along with the relevant records. In pursuance of the said directions, all the respondents appeared, and though the respondents have taken a stand that the entire record was weeded out, the same in the light of the computer generated statements stands falsified. Therefore, by order dated 05.10.2007 this Court directed the 2nd respondent, namely the General Manager, Telecom District, Tirupati, to verify the entire material produced by the petitioners along with the record available with them and submit a report regarding the status of the petitioners. The 2nd respondent having verified the claim of the petitioner that he worked from 15.12.1988 to February, 1998 in the light of the record available with them, filed additional counter stating that the petitioner worked from 01.01.1990 to 31.01.1990, 01.08.1990 to 31.08.1990 and 01.09.1990 to 30.09.1990, and that the Sub-Divisional Officer, is not competent to issue such certificate without the approval of the competent authority. However, it is the case of the respondents that the record for the period for which the petitioner is claiming to have worked with them is not available with them as they have weeded out

as per the retention schedule.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-BSNL.

The stand taken by the respondents that since the petitioner was appointed while the ban was in force he is not entitled to claim regularization cannot be accepted, for the respondents despite existence of ban engaged casual labour.

Be that as it may, the questions whether the petitioner worked for more than 240 days and whether he is entitled to regularization or not, involves disputed questions of fact, and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not decide such disputed questions of fact.

However, having regard to the facts and circumstances of the case, I deem it appropriate to dispose of the writ petition with the following directions:

The 2nd respondent, namely the General Manager, Telecom District, Tirupati, shall verify the claim of the petitioner for grant of temporary status/regularization in the light of the materials/certificates to be filed by him, if necessary by summoning the officers concerned who issued the said certificates at the relevant point of time, without reference to the engagement of the petitioner during the existence of the ban period, and pass appropriate orders, expeditiously.

Accordingly, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Dated: 19th November, 2007.
KSR